

Natural Resources & Rural Affairs Committee

Senator Jake Flake, Chairman



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NATURAL RESOURCES & RURAL AFFAIRS COMMITTEE

LEGISLATION ENACTED

air quality; clean burning gas (S.B. 1095) – Chapter 77

Conditioned on the U.S. Environmental Protection Agency approval of the revision to the State Implementation Plan, changes the annual start date clean burning gasoline is required to be used in Area C from June 1, to May 1, beginning in 2009.

navigable stream adjudication commission; continuation (S.B. 1120) – Chapter 42

Retroactive to July 1, 2008, the Arizona Navigable Stream Adjudication Commission is continued until July 1, 2012.

continuation; veterinary medical examining board (S.B. 1158) – Chapter 26

Retroactive to July 1, 2008, the Arizona Veterinary Medical Examining Board is continued until July 1, 2018.

~~funeral escort vehicles~~ (NOW: user fee; off-highway vehicles) (S.B. 1167) – Chapter 294

Beginning January 1, 2009, requires an off-highway indicia for all terrain vehicles (ATVs) and off-highway vehicles (OHVs) that weigh 1800 pounds or less and are designed and manufactured for travel on unimproved terrain. Thirty percent of fees collected from the sale of the indicia are deposited in the Highway User Revenue Fund (HURF) and the remaining 70 percent is deposited in the Off-highway Vehicle Recreation Fund (OHVRF). The monies in the OHVRF are redistributed as follows: 1) 35 percent (increased from 30 percent) is distributed to the Arizona Game and Fish Department; 2) 60 percent (decreased from 70 percent) to the Arizona State Parks Board (SPB); and 3) 5 percent (new distribution) to the State Land Department. Each agency that receives money from the OHVRF is required to submit a report to the Legislature outlining how the funds are used.

Establishes a vehicle license tax of \$3 for all ATVs and OHVs, modifies registration requirements, and requires every OHV to obtain a license plate and title. The Director of the Arizona Department of Transportation is required to systematically replace all license plates issued prior to January 1, 2009.

Establishes equipment requirements and operating restrictions for OHVs and ATVs, including prohibitions from operating off existing roads in a manner that causes damage to wildlife, over unimproved roads, on roads that are not open to the public or in a manner that damages the environment. Outlines the penalties for violating those restrictions. Any person under the age of 18 must wear protective headwear when operating and ATV or OHV on public or state land.

Exempts ATVs and OHVs used for agricultural or ranching purposes from equipment requirements and certain operation regulations.

Requires the SPB to update the Off-highway Vehicle Recreation Plan every five years rather than six, and modifies requirements for Game and Fish training programs.

department of agriculture omnibus act (S.B. 1168) – Chapter 161

Makes numerous changes to the Arizona Department of Agriculture (Department) statutes. The major provisions include:

Commercial Fertilizer Inspection Fees – Authorizes fees collected for commercial fertilizer inspections to be used for grants for conducting research and education projects and to advance the environmental and agronomical use and handling of fertilizer material. These grants are exempt from state competitive grant requirements.

Animal Services Division – Allows, rather than requires, an opportunity for a hearing with the Arizona Office of Administrative Hearings before any license issued by the Animal Services Division may be revoked or suspended and makes several changes to the procedure for holding and conducting hearings on the ownership of seized livestock. Explicitly authorizes the Department to recover costs of keeping and caring for the animal while it is under the control of the Department. Modifies the filing, summons and sale requirements related to seizure of an animal. Requires a person who finds stray livestock to either attempt to find the owner or notify the Department of the stray animal. Also requires the Department to hold stray livestock for 7 days instead of 14 days, before selling the livestock, except that the animal must be held for 14 days at the request of any person or organization.

state land department; sunset continuation (S.B. 1180) – Chapter 81

Retroactive to July 1, 2008, the Arizona State Land Department is continued until July 1, 2018.

Arizona beef council; sunset continuation (S.B. 1181) – Chapter 126

Retroactive to July 1, 2008, the Arizona Beef Council is continued until July 1, 2018.

private historic cemeteries; historic preservation (S.B. 1189) – Chapter 83

Requires the State Historic Preservation Officer (SHPO) to survey, maintain an inventory of and provide preservation information pertaining to private burial sites and historic private cemeteries. Requires SHPO to make recommendations on the certification, classification and eligibility of private burial sites and historic private cemeteries for property tax and investment tax incentives. Exempts historic private burial sites and historic private cemeteries from property tax assessments. Enables SHPO to assist and advise property owners on tax exemptions for and to make records available in order to assist in locating the families of persons buried in private burial sites or historic private cemeteries.

~~adjudication monitoring committee; repeal~~ (NOW: outdoor fires; counties) (S.B. 1238) – Chapter 275 W/O

Removes authority for a county to adopt ordinances prohibiting open fires in private property islands within the boundaries of a national forest or U.S. Bureau of Land Management or state land holdings if a prohibition has been declared for the surrounding land. Instead, a county is authorized to adopt an ordinance prohibiting open fires and campfires in designated unincorporated areas when

the county emergency management officer issues a determination of emergency and the county board of supervisors deems it necessary to protect public health and safety.

local stormwater quality programs (NOW: local stormwater pollution prevention) (S.B. 1288) – Chapter 192

Authorizes counties to adopt ordinances to develop, implement and enforce a stormwater pollution prevention plan and stormwater management program as required by the Clean Water Act (CWA), as long as the ordinance does not conflict and is not more stringent than the CWA. A county is authorized to establish a permit and inspection program, designate an administrative director for the plan or program and charge fees for the use of lands or rights-of-way and for the discharge of water across those lands. However, a county may not require a person to have a permit if that person is already being regulated for the same activity at the same location by a state or federal pollution discharge elimination system permit. Fees collected for a permit must be deposited with the county and must be used to administer the program. The county may enforce the ordinance in the same manner that the Arizona Department of Environmental Quality enforces the statewide program, with certain exceptions.

flood protection districts; financing (S.B. 1289) – Chapter 85

Establishes an additional financing option for a flood protection district and outlines the mechanism for a flood protection district to make an assessment on the district for the construction, reconstruction, replacement, renovation or repair of a flood protection facility, which is defined.

A petition signed by owners, who are in favor of the proposed project, of more than 50 percent of the acreage that will be subject to the assessment is required before the district can adopt a resolution of intention. Outlines the process for the flood protection district to adopt a resolution of intention to construct a flood protection district. Once adopted, notice must be provided to any person owning a lot, acre or parcel in the district of the intention to levy an assessment. Any person who may be assessed may object to the assessment and the district board must have a hearing on all objections. In addition, any land found not to benefit from the improvement must be removed from the assessment.

If there are no objections or if all objections have been addressed, the district is authorized to order construction of the facility. Outlines the process for hearing and awarding contracts for construction either through sealed bids or through the Arizona state procurement process. The contractor awarded the project is required to sign a contract and file a surety bond with the district.

Requires the board, upon execution of the contract, to estimate the benefits expected to arise as a result of the work and then make an assessment on the lots, acres or parcels of the district in proportion to the benefits to be received in a total amount adequate to cover the costs.

When the estimate is complete, the people owning the lots, acres or parcels assessed must either pay the full amount within 30 days, or the board may issue improvement bonds to cover the remaining unpaid assessments of the flood protection facility. The bonds must be noted in the resolution of intention, which must also specify the maximum rate of interest for the bonds. The bonds must mature within a maximum of 40 years and be paid off in annual installments. The installments are collectible in the same manner as state and county ad valorem taxes. The summary sale of delinquent properties is authorized.

Makes other changes related to a person's right to object to the flood protection district procurement authority, contractor bond requirements and the district's general fund.

exempt wells; internal reference corrections (S.B. 1326) – Chapter 71

Corrects internal statutory references regarding exempt wells.

state forester; wildfire suppression funding (S.B. 1338) – Chapter 129

Authorizes the State Forester to incur liabilities totaling \$3 million from the state General Fund for the purposes of fire suppression and equipment pre-positioning, by combining the current authority to incur \$2 million and \$1 million, respectively, on these activities separately.

poultry husbandry (S.B. 1373) – Chapter 32

Requires the Arizona Department of Agriculture (Department) to adopt rules for poultry husbandry and for the production of eggs sold in Arizona. These regulations apply to egg producers operating or controlling the operation of one or more egg ranches each having 20,000 or more egg-laying hens producing eggs. Provides that the regulation of poultry husbandry is not subject to further regulation by a county, city, town or other political subdivision of the state. The Department is authorized to prescribe minimum standards by rule for egg processing plants and sanitary standards for the processing of shell eggs.

drought emergency groundwater transfers (S.B. 1380) – Chapter 88

Retroactive to April 30, 2008, in areas outside of active management areas, under specified circumstances, allows groundwater to be transferred away from a groundwater basin on application to and approval by the Director of the Arizona Department of Water Resources (Director). Requires the Director to approve an application to transport groundwater away from a groundwater basin if certain conditions are met. Repeals the transfer of groundwater authority after April 30, 2009.

Arizona emissions bank (S.B. 1384) – Chapter 130

Continues the Arizona Emissions Bank program until July 1, 2019.

racing; commission; department; continuation (S.B. 1394) – Chapter 73

Retroactive to July 1, 2008, the Arizona Racing Commission and Department of Racing is continued until July 1, 2016. Establishes the Racing Investigation Fund (Fund) in the Arizona Department of Administration (ADOA) consisting of monies collected from racing permittees in an amount to cover the projected cost of investigations. Monies in the Fund are continuously appropriated and must be distributed as instructed by the Director of the Department of Racing for authorized expenses.

~~mine inspector; surplus property~~ (NOW: mine inspector; abandoned mines; donations) (S.B. 1438) – Chapter 89

Authorizes the State Mine Inspector (Inspector) to accept in-kind donations of material, equipment or services for the purpose of eliminating public safety hazards regarding abandoned mines and allows inert material to be used as fill material for abandoned mines. Exempts a person or entity that makes a donation from liability for damages in any civil action for injury or death related

to that donation. The Inspector may recover costs in a civil action brought by the Attorney General for enforcing abandoned mine requirements. Repeals the authority for the Inspector to donate used mine equipment.

county buildings; sale; nonprofit entities (H.B. 2219) – Chapter 266

Notwithstanding any other law, authorizes counties with a population of 100,000 persons or less to sell any real or personal property that is currently being leased by the county to a nonprofit entity without appraisal or public auction and at a price to be determined by the county board of supervisors. The sale must occur within 12 months of the enactment of this legislation.

game and fish omnibus (H.B. 2251) – Chapter 37

Effective January 1, 2009, makes numerous changes to regulations regarding game and fish licenses, stamps, tags and policies and creates an apprentice license. For an apprentice license, a mentor must be at least 18 and possess a valid hunting license. A mentor is authorized to apply for an apprentice hunting license up to two times each calendar year, and the animals that an apprentice is authorized to hunt are outlined. Additionally, Game and Fish Commission authority to revoke guide licenses is modified to allow revocation or suspension based on the number of violations.

~~business personal property valuation; depreciation~~ (NOW: water supply; disclosure) (H.B. 2270) – Chapter 216

Beginning January 1, 2009, requires the Department of Real Estate to: 1) post information on its website advising prospective buyers to investigate water supplies before purchasing a property; and 2) include a link to the Arizona Department of Water Resources (ADWR) website, which is required to have the definitions of subdivision water supply terms posted.

In addition, a city, town or private water company located outside of an active management area is required to provide a written statement describing the water supply status of property within its service area within three business days of a request by any person. The water supply status description must be based on the most recent determination of the Director of ADWR for the city, town or private water company, including the appropriate water supply definition.

emissions testing; motorcycles; area A (H.B. 2280) – Chapter 64

Conditioned on the U.S. Environmental Protection Agency (U.S. EPA) approval of the change to the State Implementation Plan (SIP) by July 1, 2010, exempts motorcycles in Area A from having to take and pass an emissions test. The Director of the Arizona Department of Environmental Quality must notify the Director of the Arizona Legislative Council in writing when the U.S. EPA approves the change in the SIP.

falconry; captive bred exotic raptors (H.B. 2332) – Chapter 217

Authorizes a person to possess, transport and use for falconry birds not listed in the Migratory Bird Treaty Act without a sport falconry license if the person has qualified to become a Class II, General or Class III, Master Falconer.

sale of beef by producer (H.B. 2334) – Chapter 102

Adds beef and beef, pork, poultry, egg, milk, lamb and sheep products to the definition of “food product” for the purposes of farmers’ markets.

flood control districts; property (H.B. 2420) – Chapter 107

Adds the state or a county to the list of entities to which flood control districts (districts) may sell property without a public auction. Requires a district to obtain an appraisal of the fair market value of the property by a certified appraiser before selling the property to the state or a political subdivision, including a county. Also includes property sold by the district to the state to the requirement that if the property is subsequently sold to the state or a county as undeveloped property for a price greater than the original sale price, the district will be paid the difference between the original price and the subsequent sale price.

underground storage tanks; energy act (H.B. 2425) – Chapter 218

Enacts multiple changes. Major provisions include:

Underground Storage Tanks (UST) – Makes changes to the UST requirements as required by the Energy Policy Act of 2005, beginning January 1, 2009, including requirements for notification, secondary containment and release detection and piping component and motor fuel dispensers installation.

Stop Use Tags – Authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to issue stop use orders if a UST violates performance standards or release and recordkeeping requirements and continued operation may result in continued release or new release from the UST. Requires the Director to affix a visible stop use tag on a UST that is issued a stop use order and establishes various procedural requirements and prohibitions relating to USTs with stop use tags. The Director must notify product deliverers of a stop use notice by posting the notice on the ADEQ website and remove a notice within five business days of determining that the UST is in compliance.

Certificate Qualifications – Requires, beginning August 9, 2012, a UST owner or operator to designate the following individuals: 1) a class A individual, who has primary management responsibilities or decision-making authorities; 2) a class B individual, who has daily operation, maintenance and recordkeeping responsibilities; and 3) a class C individual, who has initial emergency response responsibilities. Establishes training requirements for class A, class B and class C individuals.

waste tire collection sites (H.B. 2426) – Chapter 45

Requires waste tire sites with at least 500 waste tires stored for more than 12 months to obtain approval of a solid waste facility plan from the Arizona Department of Environmental Quality (ADEQ), unless the site is owned by a municipality or county. Waste tire sites not required to obtain a solid waste facility plan are required to comply with self-certification procedures. In addition, a site containing 100 or more used motor vehicle tires must register the waste tire site on a form approved by ADEQ that specifies the location of the site, the owner of the property, the owner or operator of the business storing the waste tires and, if applicable, the type and approximate quantity of waste tires.

unlawful public sale of animals (H.B. 2485) – Chapter 305

In counties with a population greater than 800,000, prohibits knowingly selling an animal on any public highway, street, park or adjacent public property, or on commercial private property without express consent of the owner. A person found responsible for unlawfully selling an animal is subject to a civil penalty of not more than \$50. Exceptions to this prohibition are outlined.

oil and gas; shut-in royalty. (H.B. 2511) – Chapter 239

Outlines the process for asserting shut-in status for an oil and gas lease issued by the State Land Department (Department). Shut-in status means that an owner of an oil and gas lease is unable to produce in paying quantities because of a lack of transportation, processing facilities or a market. The process for asserting shut-in status is established, which requires completion of the well according to industry standards and a well completion report to be filed with the Oil and Gas Conservation Commission. A copy of the well completion report must also be submitted to the Department with a calculation showing that, if transportation facilities were present and a market existed, either the monthly proceeds of the well would be expected to exceed the monthly operating expenses or an alternate test demonstrating an ability to produce in paying quantities. The timeline for the Department to deny shut-in status is outlined.

In addition, outlines the mechanism for determining an “arm’s length price” for royalties on oil and gas leases on state trust land, and specifies alternatives for determining the royalties if an “arm’s length price” is not available. An “arm’s length price” is defined as a price negotiated between a willing buyer and a willing seller. Modifies the process for issuing a lease on state trust land in the case that two competitive bids are submitted simultaneously.

agricultural improvement districts; amendments (H.B. 2524) – Chapter 137

Conditioned on the approval of amendments to the Salt River Water Users’ Association articles of incorporation by January 1, 2009, makes changes to voting and election requirements for an agricultural improvement district (district).

A person with a revocable trust is allowed to be nominated and run for the board of directors, district council, and president and vice president of the district. An alternative election process is outlined that eliminates on-site voting locations, except for early voting, and allows for mail-in ballots. In addition, the timeframe for nominating candidates for the board of directors and the council is modified to require nominations to be submitted 60 days before the election rather than 20, and the timeframe for being considered a property is changed to 100 days before an election from 60 days. The determination of the results of an election is modified to be based on the highest number of votes cast rather than a majority of votes and the requirement to have a warrant. Repeals the imprest fund requirements.

~~biofuel standards~~ (NOW: standards; biofuel) (H.B. 2621) – Chapter 254

Removes specific reporting requirements for biodiesel and requires diesel fuel dispensers that contain up to five percent biodiesel, to be labeled with the statement “may contain up to 5% biodiesel.” Requires product transfer documents to include the percentage of biodiesel in the final product. The Director of the Department of Weights and Measures is required to adopt rules to establish and enforce national or federal standards, test methods, registration and reporting requirements, and labeling requirements for biofuels and biofuel blends and quality assurance and control programs and equipment standards for biofuel producers, blenders and suppliers. Additionally, exempts from liability for injuries or property damage that result from a consumer misfueling if the supplier or retail seller is in compliance with regulations.

Establishes the Biofuels Conversion Program and the Biofuels Conversion Program Fund under the Arizona Department of Commerce.

This program expires on July 1, 2013

interstate water transfers (H.B. 2771) – Chapter 153

Outlines the factors the Director of the Arizona Department of Water Resources may consider when establishing a fee for an application to transport water from Arizona for use in another state.

~~groundwater transfers; drought emergency~~ (NOW: Coconino plateau groundwater basin; withdrawal) (H.B. 2772) – Chapter 224

Exempts from the current prohibition on transporting groundwater away from a groundwater basin, and authorizes the continuation and expansion of water transportation of up to 700 acre-feet per year from an adjacent groundwater basin by a city or town in the Coconino Plateau Groundwater Basin with a population of less than 8,000 persons. Requires the Director of the Arizona Department of Water Resources (Director) to validate that the water transportation has been occurring as of January 1, 2001, and was drilled erroneously without knowledge of its adjacent groundwater basin origination. Establishes that the groundwater may only be withdrawn from wells located two miles or less from the Coconino Plateau Groundwater Basin boundary that are drilled to at least 2,500 feet below the surface. Requires the groundwater to be used within the service area of the municipality using available surface water supplies when practicable.

Authorizes the Director to increase the amount of water allowed to be transported if a city or town applies for the purposes of fire protection in an emergency. Requires a municipality to cease groundwater transportation from an adjacent groundwater basin if: 1) the municipality obtains the legal right to a new water supply, other than groundwater, located outside of its corporate boundaries; 2) the new supply of water is physically available through a canal or pipeline; and 3) the Director has determined that the supply of water, including other water supplies, is sufficient to provide a sustainable water supply for the municipality.

pest control; department of agriculture (H.B. 2822) – Chapter 309 E

Effective July 7, 2008, eliminates the Structural Pest Control Commission (SPCC) and replaces it with the Office of Pest Management (OPM). The Director of the Arizona Department of Administration (ADOA) is responsible for appointing the OPM Acting Director subject to specified parameters.

Transfers SPCC statutes relating to the regulation of pest management to the OPM; duplicative provisions and provisions that do not apply to the OPM are removed. Further, financial security requirements are modified, the OPM is authorized to refer formal hearings to the Office of Administrative Hearings (OAH) and utility employees and employees of political subdivisions are exempted from licensing requirements.

Stipulates that the SPCC rules remain in effect until superseded by the OPM, and any licenses, contracts or other matters issued by the SPCC remain in effect as well. SPCC equipment and personnel are transferred to the OPM, including unexpended and unencumbered money. Stipulates that the OPM will continue to occupy the location currently occupied by the SPCC.

Establishes the Pest Management Advisory Committee to generally advise the OPM Acting Director and outlines membership and appointment requirements.

Requires the Office of the Auditor General to conduct a performance review of the OPM and make a report to the Legislature and Governor by November 12, 2010, that includes recommendations for the regulation of the pest management industry to best protect the public and on the reorganization and oversight of the OPM.

LEGISLATION VETOED

~~mineral inventory; technical correction~~ (NOW: public rights-of-way; claims) (S.B. 1264) – VETOED

Asserts and claims, on behalf of the state and its political subdivisions, rights-of-way across public lands acquired under the Mining Act of 1866, reenacted and recodified as Revised Statute 2477 (R.S. 2477). Outlines lands that qualify as R.S. 2477 rights-of-way. The parameters and rights of R.S. 2477 rights-of-way are outlined. Stipulates that the state does not waive, abandon or exchange any rights-of-way under R.S. 2477 unless by a formal written action. Any action taken out of compliance with that provision is void. Additionally, states that failure to maintain an R.S. 2477 right-of-way, or include it on a map of public roads, does not affect its status as a highway.

In her veto message, the Governor states that much of the land that would be affected by this legislation has changed ownership and adjudicating all of those rights-of-way would create unnecessary uncertainty. In addition, the letter states that the veto of this legislation does not preclude the future assertion of claims to R.S. 2477 rights-of-way on a case-by-case basis.

~~joint underwriting and reinsurance organizations~~ (NOW: greenhouse emissions; regulations; fuel economy) (H.B. 2017) – VETOED

Prohibits statutory agencies of the state from adopting or enforcing regulations to implement a state or regional program to regulate greenhouse gas emissions or motor vehicle fuel economy without express legislative authorization. Defines greenhouse gas.

The Director of the Arizona Department of Environmental Quality (ADEQ) is required to provide a written report to the Governor, Legislature and Arizona Corporation Commission on each proposed program to address greenhouse gas emissions or motor vehicle fuel economy or any cap and trade program recommended by the Western Climate Initiative (WCI).

Contains a legislative intent clause.

The Governor states in her veto message that ADEQ has a statutory responsibility for establishing standards for car emissions and followed the process required by law when establishing the Clean Car Rules. Further, adjustments to the Clean Car Rules are better dealt with administratively. The Governor also stated that the WCI recommendations are not requirements and that it would be premature to require legislative approval for all programs related to greenhouse gases.